U.S. Senate
Republican Policy
Committee

Larry E. Craig, Chairman
Jade West, Staff Director

Legislative Notice

Editor, Judy Gorman Prinkey

No. 6A (Update)

April 9, 1997

S. 104 – Nuclear Waste Policy Act of 1997

Calendar No. 27

Update . . . Update . . . Update

Senator Murkowski has reached an agreement with Senator Bingaman on a substitute for S. 104 that contains the following seven changes from S. 104, as reported. (For details on the bill as reported, see RPC's Legislative Notice No. 6, dated March 20, 1997.)

On April 7, 1997, the Office of Management and Budget transmitted a message to the Congress, indicating that the President would veto the bill if it were presented to him in its current form. It is not yet clear whether the Murkowski/Bingaman substitute, if adopted, will be sufficient for the President.

The majority staff of the Energy and Natural Resources Committee has provided this summary of the changes being made to the reported bill under the Murkowski/Bingaman substitute.

- **Central Storage Facility Capacity: Under S. 104**, the size of the interim storage facility is limited to 60,000 metric tons of uranium, under certain conditions.

  The substitute would allow the Secretary of Energy to set the limit, based upon amount needed to accommodate fill rates. The initial capacity (assuming 2015 ready date) would be 33,100 metric tons of uranium, and is adjustable.

- **Timing of Central Storage Facility Construction: Under S. 104**, if the Yucca Mountain site is viable, construction of a central storage facility begins December 31, 1998, and operation begins by December 31, 2002. If Yucca Mountain is not viable, construction of a storage facility will begin December 31, 2001, and operations will begin by December 31, 2004.

The substitute delays these dates as follows: If Yucca Mountain is viable, construction will begin December 31, 2001, and operating by June 30, 2003. If Yucca Mountain is not viable, construction will begin December 31, 2003, and operations by June 30, 2005.

- **Public Radiation Protection Standard: Under S. 104**, a health standard for maximum radiation dose is set at 100 millirem, with authority for the Nuclear Regulatory Commission (NRC) to change the standard as necessary to protect public health and safety.

  The substitute authorizes the Environmental Protection Agency (EPA) to be involved in setting the radiation protection standard. Based on a risk methodology, the standard will be between 25 and 30 millirem.

- **National Environmental Policy Act Requirements: Under S. 104**, the DOE is treated as a private entity, required to develop a single environmental report with its license application for development of the central storage facility.

  The substitute retains the provision for a single Environmental Impact Statement, and requires generic analysis of impacts of transporting used fuel to the storage facility.

- **State Preemption: Under S. 104**, the Atomic Energy Act and Hazmat legislation preempts all inconsistent laws.

  The substitute applies a Hazmat-type approach, which balances state and federal law, allowing preemption of state and local laws only where state intransigence prevents the federal purpose.

- **Funding for the Integrated Used Fuel Management System: Under S. 104**, a user fee is established beginning in FY 2003. The fee is capped at one mill per kilowatt-hour. One-time payments occur on September 30, 2002. The Energy Secretary will evaluate the adequacy of the fee and submit a recommendation to Congress for adjustments.

  The substitute establishes a user fee, also capped at 1 mill per kilowatt-hour, starting in FY 2000 and continuing through FY 2003; then current law is reinstated for FY 2004 and FY 2005; and the user fee is re-imposed for years after FY 2005. One-time payments will be due September 30, 2002.

- **Current Legal Action: Under S. 104**, pre-existing legal rights are protected.

  The substitute removes this express language and substitutes a "sense of Congress resolution" urging the parties to settle their differences.

RPC Staff Contact: Mark Whitenton, 224-2946